

FCC MAIL SECTION

Federal Communications Commission

DA 99-2095

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 98-180
Table of Allotments,)	RM-9365
FM Broadcast Stations.)	
(Fremont and Holton, Michigan))	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 29, 1999

Released: October 8, 1999

By the Chief, Allocations Branch:

1. In response to a Petition for Rule Making filed by Noordyk Broadcasting, Inc. ("Noordyk"), the Commission has before it for consideration the Notice of Proposed Rule Making, 13 FCC Rcd 18838 (1998), requesting the reallocation of Channel 261A from Fremont, Michigan, to Holton, Michigan, and modification of the license for Station WSHN-FM to specify Holton as the community of license. The Notice also requested comments on whether the policy established in Newnan and Peachtree City, Georgia, 7 FCC Rcd 6307 (1992), should be continued and whether it should be extended to pre-1989 Class A FM stations that are not now in conformity with our current spacing requirements. In Amendment of Part 73 of the Rules to Provide for an Additional FM Station Class (Class C3) and to Increase the Maximum Transmitting Power for Class A FM Stations, 4 FCC Rcd 6375 (1989), the Commission set forth new separation requirements for Class A stations which permit six kilowatt operation. Existing Class A FM stations complying with the new separation requirements were permitted to increase their operating power from three to six kilowatts. In this situation, Station WSHN-FM does not comply with the new separation requirements and will continue to be limited to three kilowatts. Noordyk filed supporting comments in which it reaffirmed its interest in Channel 261A at Holton. Fuller-Jeffrey Radio of New England, Inc. ("Fuller-Jeffrey") filed comments.

2. The proposed reallocation of Channel 261A from Fremont, Michigan, to Holton, Michigan, was filed pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permit the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a new Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990) ("Change of Community"). Holton, located in Muskegon County, has definable boundaries, its own elected government, a fire department,

its own school system for grades kindergarten through grade 12 and its own postal zip code (49425) and a population of 2,318 people.

3. Noordyk states that it is the licensee of Radio Stations WSHN-AM and WSHN-FM at Fremont. Noordyk further states that the reallocation of Channel 261A to Holton, Michigan, would provide that community with its first local aural service while Station WSHN-AM would continue to provide local service to Fremont. Noordyk points out that it submitted a Technical Statement demonstrating that Channel 261A can be allotted to Holton in compliance with Section 73.213(c) of the Commission's Rules at the present WSHN-FM transmitting site.¹ Noordyk states that it currently does not operate Station WSHN-FM at maximum 3 kilowatt facilities but that the reallocation will permit Station WSHN-FM to increase the height of the WSHN antenna center of radiation which will allow it to increase operating power to the maximum 3 kilowatts. According to Noordyk, operating at maximum 3 kilowatt facilities will permit an increase in population from 40,218 people to 43,146 people and an increase from 1,590.7 square kilometers to 1,828.7 square kilometers. Noordyk points out that Station WSHN-FM at Holton will continue to provide 1mV/m service to Fremont as there will be no change in transmitter location.

4. Fuller-Jeffrey, licensee of Station WPKQ, Berlin, New Hampshire, urges the Commission to grant Noordyk's request to change the community of license for Station WSHN-FM leaving the policy established in Newnan and Peachtree City intact and extending the policy to pre-1989 grandfathered Class A FM stations operating at three kilowatts. Fuller-Jeffrey points out that its interest in this proceeding is to protect the policy adopted in Newnan and Peachtree City as Fuller-Jeffrey is currently involved in a rule making proceeding in MM Docket No. 97-216 requesting the reallocation of Channel 279C from Berlin, New Hampshire, to North Conway, New Hampshire, and modification of its license for Station WPKQ. Fuller-Jeffrey states that its proceeding in MM Docket No. 97-216 is similar to the instant proceeding involving Fremont and Holton, Michigan, as both cases involve grandfathered short-spacings in which the affected station does not propose to modify its transmitting facilities.

5. After a review of the comments filed in this proceeding, we believe that it is in the best interests of the public to allow pre-1989 "grandfathered" FM stations that were in compliance with our Rules when authorized to continue to be afforded the same opportunity to change their community of license as other stations authorized in conformity with our Rules. In Newnan and Peachtree City, the Commission reallocated Channel 244A from Newnan to Peachtree City and modified the license of Station WJKJ to specify Peachtree City as the new community of license. Although Station WSHN-FM is not a pre-1964 "grandfathered" station as in Newnan and Peachtree City, it is a pre-1989 station that does not meet the current spacing requirements set forth in Section 73.207 of the Commission's Rules. While the Commission recognized that in Newnan and Peachtree City we were authorizing a short-spaced allotment to another pre-

¹ The former separation requirements for a three kilowatt FM operation are now set forth in Section 73.213(c)(1) of the Rules.

1964 station by granting the community change, no change in class or transmitter site was requested, therefore no additional or new short spacing was created. Here, Station WSHN-FM is fully spaced as a three kilowatt station to all stations prior to the rule changes which became effective in 1989 but is short spaced under the current rules which changed the spacing requirements and increased the power of a Class A station from three to six kilowatts. Station WSHN-FM, under the current rules, is short spaced to Station WBCH, Channel 261A, Hastings, Michigan, and Station WSRQ, Channel 261A, Bear Lake, Michigan, but is fully spaced to these stations under the rules in effect prior to 1989. However, since Station WSHN-FM is not changing its transmitter site and will continue to operate at three kilowatts or less, there will be no additional or new short spacing created by granting the change of community from Fremont to Holton, Michigan.

6. In considering a reallocation and change of community of license proposal, the Commission compares the existing allotment versus the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM allotment priorities set forth in Revision of FM Assignment Policies and Procedures ("FM Priorities"), 90 FCC 2d 88 (1982).² Using these priorities, we believe that the public interest is best served by reallocating Channel 261A to Holton. Specifically, since the retention of Channel 261A at Fremont will not provide a first or second full-time aural reception service and will not be a first local transmission service, it must be considered under Priority (4), other public interest matters. Under this priority, it would provide a second local service to Fremont, a community of 3,875 people. By way of contrast, reallocating Channel 261A to Holton, a community of 2,318 people, would be a first local service under Priority (3), which is a higher allotment priority. In addition, the reallocation will not have a gain or loss of service as Noordyk has stated that there will be no change in transmitter location.

7. An engineering analysis has determined that Channel 261A can be allotted to Holton, Michigan, in compliance with the Commission's minimum distance separation requirements at the current licensed site for Station WSHN-FM.³ From this site, Station WSHN-FM is considered a pre-1989 grandfathered short-spaced station for purposes of this rule making proceeding operating as a three kilowatt Class A station at Holton. Here, it should be noted that Station WSHN-FM under the current spacing rules at six kilowatts is short spaced to Station WBCH, Hastings, Michigan, and Station WSRQ, Bear Lake, Michigan. In granting Noordyk's request for a change of community and protection as a grandfathered short spaced station, Noordyk will be expected to specify its current licensed site for Station WSHN-FM, Fremont, for the applications for a construction permit and a license for Station WSHN-FM,

² The FM allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [Co-equal weight given to priorities (2) and (3).]

³ The coordinates for Channel 261A at Holton are 43-28-15 and 85-56-25. Since no change in transmitter site is contemplated, concurrence of the Canadian Government is not required for the reallocation of Channel 261A from Fremont to Holton.

Channel 261A, Holton, Michigan. In accordance with Section 1.420(i) of the Commission's Rules, we will modify Station WSHN-FM's authorization to specify operation on Channel 261A at Holton, Michigan, as its new community of license.

8. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective November 22, 1999, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

Community	Channel No.
Fremont, Michigan	-----
Holton, Michigan	261A

9. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the License of Noordyk Broadcasting, Inc. for Station WSHN-FM, Channel 261A, Fremont, Michigan, IS MODIFIED to specify operation on Channel 261A at Holton, Michigan, subject to the following conditions:

(a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301);

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

10. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Noordyk Broadcasting Inc., licensee of Station WSHN-FM, is required to submit a rule making fee in addition to the fee required for the application to effect the change in community of license.

11. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this Report and Order by Certified Mail, Return Receipt Requested, to the following:

Station WBCH-FM
Barry Broadcasting Co.
P. O. Box 88
119 W. State Street
Hastings, Michigan 49058

Station WSRQ
Roger Lewis Hoppe II
P. O. Box 262
Bear Lake, Michigan 49617

12. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

13. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

FEDERALCOMMUNICATIONSCOMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau